

BEDFORD PLANNING BOARD
Selectmen's Meeting Room
Continuation of Public Hearing Followed by General Session
June 23, 2015

MEMBERS PRESENT: Jeff Cohen; Shawn Hanegan; Amy Lloyd, Chair; Sandra Hackman, Clerk; Lisa Mustapich.

STAFF PRESENT: Glenn Garber, Planning Director; Catherine Perry, Assistant Planner; Kim Siebert, Acting Recording Secretary

STAFF ABSENT: Cathy Silvestrone, Planning Administrative Assistant

OTHERS PRESENT: Paul Baia, 12 Coachmen Lane; Pamela Brown, Brown and Brown, PC; Phil Friden, 32 Washington St; Michael Harrington, 9 Patriot Circle; Andrew Jeffrey, 11 Patriot Circle; Phil Lombardo, 41 North Road, attorney representing abutters/neighbors of 57 & 75 Hartwell Rd; David Powell, Finance Committee liaison; Ruth Robinson, Bedford Arbor Resource Committee; Daniel Sabbag, 7 Patriot Circle; Rosetta Sabbag, 7 Patriot Circle; John Stella, 20 Washington St.; Boo Topeka, 28 Washington St.; Bonus Varghese, 57 Hartwell Ave; Paral Wiley, 12 Coachmen Lane.

Ms. Lloyd called the meeting to order at 7:30 PM.

The Emergency Evacuation notice was read by Ms. Hackman, Clerk.

Note: All meeting submittals are available for review in the Planning Office.

DEVELOPMENT PERMITTING: 57 & 75 Hartwell Road 3 Lot Subdivision—continued public hearing from June 9

Documents in hand:

- 1) Memo (five pages) from Assistant Planner Catherine Perry to Planning Board dated June 19, 2015 Subject: Continued hearing on 57 & 75 Hartwell Road Subdivision (Alphonsa Lane).
- 2) Draft Certificate of Planning Board Action for Definitive Plan, Alphonsa Lane.
- 3) Emails from Fire Department dated June 13 and 19, 2015 indicating that the Department is satisfied with the revised plans.
- 4) Email from John Stella (Washington St resident) to Catherine Perry dated Tuesday June 23, 2015 Subject: Relay To Board Members
- 5) Letter on Town of Bedford Department of Public Works letterhead, dated June 22, 2015 from Adrienne St. John, Public Works Engineer and Kristin Dowdy, Civil/Environmental Engineer RE: Definitive Subdivision—Alphonsa Lane 57 & 75 Hartwell Road, giving comments on the revised plans and stormwater information dated June 16.
- 6) Memorandum on Brown & Brown, PC letterhead dated June 16, 2015 TO: Bedford Planning Board FROM: Pam Brown RE: Alphonsa Lane –Revised Plans. Attachments from EBI Consulting.
- 7) EBI Consulting plan of Alphonsa Lane showing T-shaped turnaround shaded yellow and potential reserve strip marked with red line. Based on Figure 3.1B Fire Truck Turning Movements.

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- 8) Letter from Andrew Jeffrey dated 23 June 2015 to Planning Board. Subject headings: Drainage, Easements, Roadway Geometry, Landscape Plan, and Conclusion, with T turnaround drawings on last page.
- 9) Revised plan set from EBI for Alphonsa Lane Definitive Subdivision, revised date June 16, 2015. Sheets C-1 through C-7 plus Plan of Land showing existing conditions.
- 10) Memo to Planning Board on Alphonsa Lane subdivision dated June 23, 2015 from Board member Sandra Hackman.

At 7:35, Ms. Lloyd reopened the continued Public Hearing on the proposed 3 lot definitive subdivision at 57 & 75 Hartwell, noting that— due to several continuations— the deadline for a decision on the case is approaching. She then informed the applicant, neighbors and abutters of the appeals process— in accordance with Massachusetts General Law Chapter 41 Section 81BB—that allows a 20-day window for appeal to be filed in Superior Court [or Land Court]. The appeal clock starts ticking when the Board’s decision is recorded with the Bedford Town Clerk.

Attorney Pamela Brown then listed the items that remained to be addressed after the last public hearing session on June 9th, and changes the proposal has undergone since that time.

“At the last hearing we focused on a few items that were making people uncomfortable. Most important was the fire turnaround, the buffer strip—most specifically the treatment of a portion of the buffer that was outside the right-of-way we created with the intent of avoiding [second] front yards for the abutting neighbors. Drainage has been a consistent issue—and I feel like we’ve responded quite affirmatively there. The last thing that came up was some discussion of mounding and how much fill is going in over the property.”

Fire turnaround: Ms. Brown said it had taken “quite a while to get a sit-down with the Fire Department” but that finally the negotiations “came pretty close to a 90 degree T.” “The challenge was that because we don’t have a larger site, with lots on both sides of the street, it wasn’t easy to create a T. But we managed to rotate the neck a little bit... This is [now] fully acceptable to the Fire Department,” Ms. Brown said.

Buffer strip: Ms. Brown recapped that originally, the proposed roadway ran closer to the Patriot Circle abutters’ property lines, whereas the buffer strip separating the abutting property lines and the paved road is now more than 20 feet in depth.

Drainage: Ms. Brown stated that the DPW asked for the development to be “designed to a higher standard” in that the drainage system would be able to accommodate 100-year storm events, not only lesser 20-year events. “This is overdesigned in terms of what the regulations say,” Ms. Brown said. “The goal is to store much more water and to hold the water back to infiltrate much more slowly. The rate of runoff is decreased over existing conditions; the surface flows have been decreased. While I understand there continue to be concerns—in much part by existing conditions—the proposal will not exacerbate any of these and hopefully will accommodate them somewhat.”

Ms. Brown added that she has created an easement document that prohibits building in the side yard area of Lot 3 that abuts Patriot Circle neighbors and establishes a 25 foot buffer there. Also, within the same

area, Ms. Brown has proposed a drainage easement in favor of the abutters. “It has an affirmative provision in it that the homeowners of Alphonsa Lane will actually maintain it but at the same time it gives [Patriot Circle] permission [to access it]...to clean up [fallen trees or other debris.]”

Mounding: “We understand fully the goal of not just creating a big mound with a house sitting on top, raising up the elevation,” Ms. Brown said. “But what our engineer has been looking at is how we balance not putting foundations deep into the groundwater, so we might be modifying groundwater flow—with the desire and the need for basements.”

“We need some fill to bring the house level up so that we can have the front of the house looking fairly normal with the grades dropping off [at the back of the house.] We’re looking at a compromise position where you have some of the foundation underground but not so deep. We understand we can’t accomplish a full, walk-out basement because of the grades,” Ms. Brown concluded.

Asked for her comments, Assistant Planner Perry directed the Board’s attention to the meeting documents in hand, including points covered in her extensive memo and the draft Certificate of Action, which discuss and list all recommended waivers, conditions and other details for the decision.

Ms. Perry added that the DPW would like the drainage easement on Lot 3 to include rights for the Town, but only for the portion of the lot that covers the overflow outlet from the infiltration system. The Board members then asked questions.

Mr. Cohen asked Ms. Brown if there is a reason the drainage easement can’t be 20 feet wide instead of the proposed 15 feet. Ms. Brown replied that 20 feet is fine.

Ms. Mustapich said the Certificate draft currently bears no mention of a formerly discussed “no-cut” zone. Also, on condition #6 (mounding), the Certificate directs the developer to “minimize mounding” without specifics. “How do we pin down what the definition of ‘minimal’ is so that what we think we’re saying is what we’re going to get?” Ms. Mustapich asked.

Ms. Perry noted that the latest plans do show an “approximate limit of tree clearing” for future development of house lots, but it is noted as “for reference only”. She suggested adding a condition that reads something like “Precise limits of tree cutting on house lots shall be finalized in the field in conjunction with qualified Town staff”, and deleting the note. Ms. Brown asked if the condition could say, also “substantially consistent with the plans” so there are mutually understood parameters. Ms. Perry considered this acceptable.

In relation to mounding, Ms. Perry said that there is a question of how far the Board can go under subdivision control without impinging on building regulation matters. She therefore had a discussion with the Code Enforcement Director to clarify the extent to which the Building Code controls basements and mounding. “First, [Mr. Laskey] said you can’t construct basements that go down into the water table. Basements have to be clear of the high water level. The second point is that the Massachusetts Code says that temporary or finished grading shall not direct water so as to create flooding or damage to adjacent property. Sometimes people construct terraces so that water isn’t running down the slope faster, or add infiltration systems. So there are potential ways to address this rather than a blanket “no basement” rule,”

Ms. Perry said. She has drafted a condition that draws attention to the need for caution without being too prescriptive.

Ms. Hackman asked if the condition about restricting tree cutting would be held in perpetuity. Mr. Garber said the no-cut provision would be applicable for the life of the development or until such time as another plan takes its place. “It’s an encumbrance on the real estate—not the same as a deed restriction but it’s a regulatory condition,” he explained.

Ms. Mustapich asked Ms. Perry if she had been able to cross check the multiple versions of the plan to make sure that everything lines up correctly. Ms. Perry replied that she has done a cross check “to the degree possible” and that she did catch a discrepancy in the setbacks shown on two plan sheets, for Lot 2[addressed with a condition]. Ms. Brown explained there were two different companies that provided surveying and engineering services.

Mr. Hanegan asked about distances between street trees. Ms. Brown showed the trees on the map, saying they would be thirty feet apart measured from one side of the roadway to the other. This means that the distance between trees on the same side of the road will be 50-60 feet. “I did confirm with DPW that this is what they wanted,” Ms. Brown said. “At the last meeting we had a request for more trees, particularly because of the waiver for the sidewalk. [So I added more trees on the west side]—a combination of white pine, rhododendrons, and spruce to add to the buffer.”

Ms. Perry said that subdivision rules talk about trees being placed 30 feet apart, and normally that would be on each side of the road, but as the Board noted at the last meeting, the species of tree make a difference to the appropriate spacing. DPW staff suggested 50 foot spacing for this type of tree.

Mr. Cohen asked about the reserve strip, to the west of the street ROW, intended to protect abutting properties from changes to the way their yards are treated under zoning. Ms. Perry explained that the applicant proposed the reserve strip; on the subdivision plan they showed it very narrow and even undetectable in places, but on a conceptual plan they had shown it wider. In discussion among staff, it was agreed that a corner lot situation was less unusual and adverse than a rear yard becoming a second front yard. The Town Manager recommended that the reserve strip remain in private ownership and thought it might be helpful to omit the portion along the lot on the corner of Hartwell Road. Mr. Cohen said he would like to see the strip go all the way along the street. “I would not be in favor of omitting the reserve strip from that corner lot.”

Mr. Brown said this was her position as well. She added, “I wasn’t involved in the meeting between staff and the Town manager [on this issue] but, in my read of the correspondence, it looks as though the discussion [of the buffer] really had to do with maintenance...I thought it was quite clear to have a single parcel of land deeded to the Town and that parcel would include the right-of-way and as long as the layout of the right-of-way doesn’t touch the property line, we don’t create this problem. That strip is quite small. The suggestion is to add it to a lot or create a homeowners’ association. But for something so small and with the DPW already maintaining the strip –except for 6 inches or two feet or three or four feet—didn’t seem right,” Ms. Brown said. “We could add an affirmative easement or responsibility to the homeowners that they should maintain it. The right of way often goes into peoples’ front yards but they mow the whole thing, right to the curb. If the concern is a burden on the Town for maintenance, we can

handle that easily. My difficulty with all this is having this long strip that was proposed to accomplish something beneficial to the Town and then to put a burden on a lot that creates a funky shape [because of this] small sliver..." When asked, Ms. Brown confirmed that she has not approached the corner homeowner as suggested, to ascertain if they want to be covered by the reserve strip.

Related to the drainage issue, Mr. Hanegan asked Ms. Brown how far down into the ground the half-basement foundation would go. Ms. Brown said her goal is to keep the foundation floor above the seasonal high groundwater. "The idea would be not to interfere with groundwater storage," Ms. Brown said. "We're talking about potentially putting a foundation at elevation 119. And to be clear, the proposal isn't for a half-basement; it's to put the foundation half below ground and half above."

Mr. Hanegan asked, with these coordinates, where a basement would fit. "There's 4 feet of space between the ground elevation and seasonal high groundwater and then you have to account for the depth of the foundation, a foundation floor and then a buffer."

Ms. Brown replied she believes the foundations can go down about 5 feet. Mr. Hanegan said, as he understands the measurements, going down 5 feet will guarantee the need for sump pumps. "The problem with sump pumps is you're essentially precluding the groundwater from occupying the volume of space. It sounds like there's still some fuzziness for how this is going to work," Mr. Hanegan said.

As a follow-up to Mr. Hanegan's line of questioning, Ms. Mustapich asked Ms. Perry, if the development were approved—and the developer mounds the property, and the neighbors see an increase of flooding on their property—what the recourse would be. "Do they sue the developer? Do they sue the Town? I think we're all concerned with changing the topography."

Ms. Perry said that after the subdivision plan being approved by the Planning Board, the plans for house development will be reviewed against the Building Code. As far as a lawsuit goes, it could be a private nuisance case against whoever owned the development at the time. Mr. Garber said that problems post-development happen all the time. "Inevitably, they come after the town, long after the developer has departed."

Ms. Brown said she has no desire to "build a mountain" and put a house on top of it. "Part of the problem is that we have to have a certain amount of foundation underground, just to meet code. We'd like to have a basement. The goal is to have the front of the house flush, probably approximately at street level. From the front of the house, it gets graded down. These houses will also have dry wells for roof run-off."

Ms. Mustapich suggested there may be a need for additional stormwater retention on the house lots.

Questions from the audience:

Andrew Jeffrey, 11 Patriot Circle: Mr. Jeffrey touched on several issues.

Drainage: "Currently, the way the project is designed, the surface run-off from all the lots is going to flow back toward the wetland area on the north side of the site. The existing drainage in this neighborhood includes a swale which takes water from the back of Washington Street and removes it from this area. When the wetland overtops, it actually goes across my yard, into the yards of folks on

Washington Street, and attempts to get into the swale. The swale currently is over capacity; it doesn't drain very well.... We don't think any additional water should be going into it. Given existing flooding conditions, there's no solution there. We had talked potentially about tapping into the Hartwell Acres detention basin but given the elevation, it doesn't seem to be possible. So, I'd like to know what can be done to the entire watershed area in terms of not having additional water run into that swale."

Mounding: "At the last meeting, the Board had some discussion about limiting mounding to approximately two feet... Given the groundwater elevation of 117 feet, you would need a significant mound."

Surveys: "I'd like to see the site re-surveyed after the fact to confirm the extent of the mounding."

Roadway geometry: "As currently designed, this turning radius onto Hartwell Road does not meet the Town's own requirement of 30 feet. It's shown at 20 feet. Increasing it to 30 would have the effects of increasing the width of the buffer and making the road safer."

The T turnaround: "The end of the road is only about 10 feet from the fence of one of the Patriot Circle abutters. That's going to cause trouble in the winter; there's no place to put the snow."

Phil Lombardo, attorney for several Patriot Circle abutters, also commented, saying there had been discussion about a "no-build" restricted area. One of the abutters—Mike Harrington—has met with the developer but Mr. Lombardo reported, "We cannot seem to get the guy to commit to where he's going to put his house. We really believe that this buffer can be extended. We feel that should be a 'no touch zone' and that can be extended out. There [would still be] plenty of room to site a reasonable house."

That led Mr. Lombardo to his next comment which pertained to process and sequencing: "If this were a site plan review process, I'm not sure you would look at this project until you knew where the foundations were going to go; I'm not sure a drainage report is done until you know where the foundations are going to be or how high the mounding is. You've spent a lot of time talking about that and speculating about that. You don't know what the impact is going to be, where they're going to put the driveway, how big the house is, if they are going to have sump pumps and where they are going to go. It cries out for the developer to tell you [these things.]"

Mr. Lombardo reiterated that the T turnaround is too close to the Sabbag's property at 7 Patriot. "It doesn't have to be that close. It can be moved away. There's no justification. There's plenty of property."

Mr. Lombardo complained that plan changes continue to be submitted too late to be fully reviewed.

Mr. Sabbag repeated that his biggest concern is that snow will be pushed off the T and into the fence shielding his property from the sub-division. Then, the fence will be damaged and snow will melt and drain onto his property. Mr. Sabbag asked, "At that point, who's responsible? Do I have to chase the Town? The developer? Are they going to say it's my responsibility because the [now damaged] fence is on my property? This [T turnaround in this location] can't be the only alternative for a cul-de-sac with three houses."

Mr. Lombardo asked what the final proposal would be to make sure his clients do not end up with two front yards.

Ms. Perry said she has included a condition pertaining to the reserve strip. One issue is that its width needs to be clear. Ms. Brown said the strip could be made a foot or two wider. Ms. Perry said the size of the strip has to be big enough to show up on an Assessor's map for it to be readily apparent to anyone trying to apply the zoning rules. Ms. Brown said that the rules about fronting on a road don't have to do with ownership but about the right-of-way. Ms. Perry commented, "This is an unusual set up. There would have to be a right-of way parcel and a separate parcel. If the reserve strip was to be Town-owned, it is unclear how it would be accepted by Town Meeting and held by a Town board; this would need to be sorted out."

Mr. Harrington, 9 Patriot Circle, said the drainage easement was not all pitched downhill. "My guess is that the water's going to pool behind my house. You can see the elevations on the drawings."

Phil Friden, 32 Washington St, asked, "How specific can you be in your restrictions on elevations and mounding and does it have teeth? Is it monitored during building and can you go in and stop the building if they violate the restrictions?"

Ms. Lloyd replied that the Planning Board's jurisdiction ends at a certain point. "Subdivision control, at its most basic core, really addresses the laying out of complying lots. It doesn't address the houses themselves. We're pushing into uncharted territory when we talk about mounding but we would like to be able to address it."

Mr. Garber added that, if the question of mounding is kept as an aspect of stormwater management, it is supportable. "If you get into aesthetics, you're getting straight into zoning. Subdivision control is a very limited authority."

Ms. Lloyd and Mr. Cohen broached the subject of monitoring during construction by hiring an independent project supervisor. Mr. Cohen said, "We're dealing with a homeowner that has no experience in development. I would be in favor of a condition, if allowed, that required a certified construction manager be employed to oversee the project. This is such a sensitive area, I think you need that professional oversight throughout the construction process. Can we tie it to making sure the stormwater measures are implemented correctly?"

Mr. Garber said suburban towns don't have staff to play the role of construction supervisor but added that "Mr. Cohen's suggestion is a creative one." Ms. Perry asked if Ms. Brown was prepared to hire a person for this job, acknowledging that it couldn't be full-time but could involve intermittent inspections and reports. Ms. Brown agreed that it wouldn't require full-time coverage. She added that both Lots 2 and 3 are going to need a list of conditions from the Conservation Commission to be able to build houses. "We have another layer of permitting required and I'm sure they will be looking at these issues as well, which may give some comfort to the neighbors."

Mr. Cohen asked about the waivers having to do with stone bounds. Ms. Brown explained that the DPW requires stone bounds at the curbs and at a number of places along a property line. She believes Ms. St.

John's inference in her comments was that the regulation, in this case, is excessive. Therefore, advised by DPW, the plan indicates specifically where stone bounds should be located, "consistent with DPW's recommendation." Ms. Perry mentioned that there may be a need for additional bounds to mark the reserve strip.

Mr. Cohen asked about the reference to prohibiting "certain types of construction" in the 25 foot buffer easement on Lot 3. Ms. Brown replied that the way it is drafted now, it prohibits "aboveground construction, erection or installation of residential dwellings and swimming pools but permits sheds or other accessory structures with a height less than 15 feet within the easement area."

Board Discussion: Ms. Lloyd used the draft Certificate of Action as a checklist for discussion. She started with the waivers page and then moved through the items to identify which line items Board members agree upon and which should be held for further deliberation.

Note: Those that appear immediately below are the items that were held for further discussion. A full list of all waivers and substantial changes to draft conditions appears in the Motions section.

Waivers:

In this category, consensus agreement was reached on all but three, which were held for further discussion:

Section 5.2.4.2 Dead End Ways – exercise Board's discretion to allow tee turnaround.

Section 6.6 Shade Trees – waive to extent necessary to allow planting of new trees and retention of existing trees as proposed.

Section 5.2.1.3 Allow a reserve strip as being in the public interest (see also Specific Condition #2).

Discussion of waivers: On the subject of **shade trees**, Ms. Mustapich and Ms. Hackman were in agreement that specifics be listed. After some discussion, including a suggestion by a neighbor for evergreen planting, Ms. Hackman called upon Bedford Arbor Resource Committee member Ruth Robinson for input. Ms. Robinson said, if evergreens are desired for year-round screening between properties, white pines should not be considered due to lack of sturdiness. Spruces are better and conically shaped. Ms. Robinson also recommended understory plantings like holly, juniper, rhododendron.

Ms. Hackman added that the 50-60 foot gap between trees will be too wide until the trees are fully mature. "I've never seen this measuring from one side of the street to the other so I don't know where we came up with that," Ms. Hackman said.

Ms. Hackman, Ms. Lloyd, and Ms. Mustapich did not like the idea of using only one type of tree, such as evergreen. "I'd like to see some more traditional shade trees that drape over the street and soften the appearance of the properties," Ms. Mustapich said. Mr. Cohen said he, too, would like to see a smaller gap between trees and agreed that they should not all be evergreen.

Ms. Brown said she was concerned about mandating a narrower distance for any/all kinds of tree species. As a compromise, the Board agreed that 40 feet between the shade trees would be the rule. No white

pinetrees are to be planted. The street trees are to be a mix of deciduous trees chosen from the list of approved shade trees. The spacing along the east side will be 40 feet. On the west side, additional trees will be planted to provide better screening between the development and abutters.

On the subject of the **Reserve Strip** along the west side of the property, Mr. Cohen said he was in favor of the strip being all the way along the street, and the property being owned by the development instead of by the Town. “I know we have a regulation against creating odd-shaped lots and Lot 2 is already ‘rather unique’, but I do not desire that the land be Town-owned,” he said.

The Board reached consensus that there should be a reserve strip, that it should be privately-owned and that it should extend to Hartwell Road.

Mr. Cohen asked Ms. Brown how the strip would be owned—in one piece or divided among the three lots. “To divide it is even worse. I guess I’d just add it to Lot 3,” Ms. Brown replied. It was agreed that the details of the ownership by the lot owners may be finalized by the applicant.

The width of the strip and the boundary between strip and right-of way will need to be clarified. Ultimately, the result should be somewhere between the minimal/hard-to-discern “green strip” indicated on the current version of the subdivision plans and the wider strip that was shown on a previous exhibit colored red and yellow, leaving a street ROW of at least 40 feet. Ms. Brown said the final plan will clearly show the distinction between right-of-way and reserve strip.

Dead end ways/ T turnaround: Ms. Mustapich said she prefers the T shape over a circle for this development. Ms. Hackman said she does not like this particular T configuration or “the ambiguous land around it.” However, she does not want a circle. Mr. Hanegan said the T is “the best of the alternatives.” Mr. Cohen said he is concerned about winter, Mr. Sabbag’s property, and where the plowed snow will be pushed.

Ms. Lloyd asked Ms. Perry to remind the Board of the different turnaround options that have previously been discussed, and the Fire Department’s views. Ms. Perry said that, under most conditions, the Fire Department prefers a circle rather than a T. “The second preference is for a hammerhead or capital T shape, rather than a lower-case T, and the reason is that they can turn while they’re going forward and then they can back straight. This is a compromise.”

Specific Conditions

Again, those below await further discussion:

2. Clear provision shall be made for a reserve strip, replacing the “green strip” shown on the plans dated June 16, 2015, to lie along the west side of the property between the new street ROW and the abutting lots at 5 and 7 Patriot Circle (Assessor’s Map 70, Lots 28Z and 29Z) but not alongside the corner property at 79 Hartwell Road (Assessor’s Map 70, Lot 31). The purpose of the reserve strip is to prevent the new street from altering the application of zoning rules to two abutting properties on Patriot Circle. The reserve strip shall be privately owned by the new subdivision homeowners - either by one or more individual lot owners or in common. The width and precise shape of the strip shall be finalized to the satisfaction of Planning and DPW staff prior to plan signing, but it shall be wide enough to be discernible

on Assessor's maps printed at customary scales, while leaving a ROW of at least 40 foot width and tapering to a point at the south west corner of Lot 3 to allow adequate frontage. The boundary, dimensions and ownership designation of the strip shall be shown on the plan prior to signing, and the Notes shall be amended to reflect these changes. The applicant shall be responsible for implementation of any grading and landscaping on the strip in accordance with the final plan, and for maintenance until the ownership is transferred to the designated lot owner(s). Drainage easements shall be provided as appropriate for maintenance of the swale. Provision of bounds for the strip shall be agreed with Department of Public Works staff and shown on the plan before signing.

3. A post lamp not exceeding 8 feet in height shall be installed in the front yard of each lot. In view of the Planning Board granting a waiver from provision of street lights, the owner and their successors and assigns, including future lot owners, shall be responsible for maintaining these post lights⁴. A street sign shall be installed by the developer *in accordance with Town standards*. 7. Due to the importance of not worsening existing periodic flooding problems in the surrounding neighborhood, any increases in ground elevation shall be minimized in the development of house lots, and final grading shall not increase the quantity or rate of any stormwater runoff onto adjacent properties. Runoff from roofs shall be directed to an infiltration system on the lot with a capacity of 2" applied to the roof area.

Discussion of Specific Conditions:

In relation to **Specific Condition #2**, the Board's consensus was to have a reserve strip with the provisions in the draft condition, except that the strip should extend all along the west side of the new street ROW to Hartwell Road. A reference to the corner property at 79 Hartwell should be included in the wording.

The Board reached consensus to add language to Specific Conditions #3 and #4 as follows:

Specific Condition #3, Street Lights – add *"The Town of Bedford shall not be responsible for future installation of a street light and if desired by residents of Alphonsa Lane, said residents shall be responsible for its cost and installation."*

Specific Condition #4, Street Sign – add *"in accordance with Town standards."*

Specific Condition #7, drainage-related mounding: Mr. Hanegan said that, despite the lengthy discussions, he still has serious concerns. "The engineer's report talks about the amount of impervious surface versus the amount of pervious surface and the sub-surface basin. That all gets changed when you make basements because you have that volume of space where the groundwater doesn't flow to. You have homeowners potentially putting in sump pumps and there's no regulation on which way they drain.

"Mounding also is another situation because you change the velocity and the way the water might run off. I'm very concerned about this and I know we don't have any meetings until the deadline to resolve it but yet it seems unresolved. I'd hate to have this go through and have these people [neighbors and abutters] have worse problems than already exist."

Mr. Cohen spoke about basement floor elevations. "If I look at the existing grades and the buildable envelopes, on Lot 1 the existing grades are 123-122. Lot 2 is 120. So we're saying the basement, said to

be at 119, is going to be a foot below that which means significant mounding.” Ms. Mustapich added that basement ceilings are required to be higher than they used to be. Mr. Cohen continued, “If the trade-off is basements or sheds in the yards, I’d rather go with sheds [for storage.] I don’t see full basements being workable, the more I look at the topography and grades...It’s a constraint of the site.”

Ms. Brown said the engineer has proposed going down a minimum of 5 feet. “He also suggests that the client hire a geo-technical engineer to look at it. But, again, these houses aren’t going to be built without [the approval] of the Conservation Commission. We’re talking about new houses in Bedford and to tell them they can’t have a basement is beyond the purview of this board. It may be that you make a condition like that and [once the calculations are done] they can easily [have a basement].”

Mr. Garber said that the only way he can see for the Board to disallow basements would be if the decision was based on stormwater concerns, not on aesthetics. “It has to be justifiable and entirely about enhancing the stormwater capacity or capability.”

Ms. Hackman asked if the stormwater plan associated with the subdivision took into account basements when the calculations were made. Ms. Perry said the calculations only covered the street, not the development of the house lots. She added that basements don’t directly increase the volume of runoff.

Ms. Mustapich said she appreciates the property owner’s desire to maximize his asset. However, “even if this is not technically wetlands, it’s ‘damplands.’ I think whether to have basements or no basements is a personal problem for the developer. But, I have grave concerns that if the consultants got it wrong and we trust them, what’s going to happen if we increase the quantity of water that is currently held on this property as it starts to vacate the property and head toward the neighbors?”

Ms. Hackman referred to the letter she wrote to the Board [document in hand #10], submitted when she believed she would not be able to attend the meeting. “I have serious concerns about stormwater on this site. I just don’t see that we are assured of not making the situation worse. I know that the applicants have designed for 100 year storms but, as one of the neighbors pointed out, we have more of those than we used to and we can expect more in the future. I think that this site is so complicated that our experts can’t figure out what to do in terms of even tying into the stormwater system of the neighbors.

“Overall, I think this site and this area has already exceeded its environmental capacity. I just don’t think we have enough confidence that we can go forward with this. It’s too risky. I have a lot of confidence in Adrienne St. John and the Town staff but this area has had poor outcomes in the past and of all the developments I’ve seen in 13 years on the Board, this is the most risky in terms of the unanticipated impacts.”

Ms. Lloyd added her comments: “I have been struggling with this. On the one hand, this is a tremendously problematic area. As [Mr. Cohen] mentioned, I don’t see, given the elevation, how there wouldn’t be significant mounding. The slope of that mound would increase the velocity of that run-off.

“On the other hand, when the DPW does sign off on the higher standard than is normally required, I’m hesitant to say that a landowner is responsible for something outside of his land that’s already broken. To

my mind, this is a sub-division that meets the letter of the law—barely—but it evades the spirit of the law.”

Ms. Lloyd then re-read the draft version of Specific Condition #7 which seemed to her to be too open-ended. She suggested a substitute text for the middle portion that would read: *“Mounding shall be restricted to the barest minimum necessary to facilitate positive run-off from the foundation of the structure except in cases where, for basement construction, a demonstrable need for additional elevation is established due to soil conditions”*

Ms. Lloyd said it was outside the authority of the Planning Board to disallow basements. Mr. Hanegan asked if basements could be disallowed on the basis of stormwater management. “I’m willing to try it and maybe it will get overturned in court but I don’t see how we can meet both no-mounding and no-groundwater without saying ‘no basements.’ I’ve been in houses that are built on slabs and they seem fine to me,” he said.

Mr. Garber said he was “a little nervous about getting outside the normal domain of conventional subdivision control, purely as a legal issue. But, as long as you tie it to stormwater, it’s at least one way to express the Board’s intent so, if a judge had to look at it, it would be clear.”

Mr. Cohen believes the subdivision is developable. “It meets the letter of the regulation. In some ways, it meets the spirit and in some ways, it’s borderline. I personally would favor the development. Mounding is not make it or break it for me. There’s got to be a way to figure this out. I don’t know how much Conservation Commission has to say about how much fill comes in [but] I honestly don’t think basements are workable.”

With regard to mounding, Mr. Cohen and Ms. Mustapich agreed that Ms. Lloyd was “on the right track” with the suggested substitute language.

Planning staff advised that the design for placing houses on the lots will be further examined at building permit stage. Mr. Garber said “Just a statement of the Board’s intent might be the best we can do.” Ms. Perry confirmed that her draft condition was aimed at drawing attention to the issue and to the Board’s concern.

Ms. Brown asked whether terracing would be considered. Mr. Garber said that this gets into house design. Ms. Brown said the question might be for Conservation instead.

Mr. Hanegan said, “My language would be to put two dimensional constraints on it. The first constraint would be that the foundation floor not be within two feet above the high seasonal groundwater—two feet being a buffer to account for storms. The second constraint would be that the mounding of the property cannot exceed two feet, vertically above the existing ground elevation for aesthetics and velocity.” He also proposed requiring an as-built survey of grades for confirmation.

Mr. Garber said that he believed the DEP regulation requires a two foot buffer above the seasonal high ground table anyway.

Mr. Cohen said that for sanitary engineering (gravity-fed sewer connections), the first floor may need to be higher than two feet above the existing average grade.

A straw poll to insert Ms. Lloyd's suggested text into Special Condition #7 yielded a vote of 3 for and 2 against with Mr. Hanegan and Ms. Hackman dissenting in favor of disallowing basements altogether.

Conditions to be met prior to plan endorsement:

Once again, conditions listed below are those that were held for further discussion:

4. The applicant shall supply copies of executed easements consisting of:

- 15 foot wide drainage easement on Lot 3 in favor of Patriot Circle abutters;
- 25 foot wide buffer easement on Lot 3 in favor of Patriot Circle abutters;
- 10 foot wide sidewalk easement on Lot 1 and #57 Hartwell Road, which is within applicant's ownership;
- Drainage easement on reserve strip as required.

5. The applicant shall supply an executed covenant to secure proper construction of the way and utility systems prior to construction on or conveyance of the lots as provided under MGL Ch 41 6 Sec. 81U and Bedford Subdivision Rules and Regulations Sec.4.1.2.2, and a note referencing the covenant shall be placed on the plan. *Broad agreement but see below for discussion points.*

Discussion of conditions to be met prior to plan endorsement:

With regard to Condition #4, the Board was in agreement that the drainage easement on Lot 3 should be 20 feet wide and that the Town should be included for maintenance of the stormwater system outlet pipe. Referring to the 25 foot buffer easement on Lot 3, the Board preferred that it stipulate no above ground structures or pools.

The Board favored adding a condition to firm up the "no touch" zone restricting tree removal be added. There was general agreement with Ms. Brown that it should be "consistent with the approximate limits shown on the plan". The note on the plan referencing tree cutting that reads "for reference only" will now be deleted.

Based on Mr. Cohen's suggestion, the Board agreed to add a condition to require the applicant to hire an independent professional to adequately monitor the stormwater aspects of construction on the whole site.

With regard to condition #5 and the Performance Guarantee section of the Certificate of Approval, Mr. Garber asked if a specific form of performance guarantee should be identified. Ms. Perry asked if the applicant had a specific suggestion at this stage. The applicant preferred to place a covenant on the land for now, and later identify an asset form of security to enable the lots to be sold or developed, as provided for in the draft.

General Conditions

The following condition was held for additional discussion:

2. The construction of the way and installation of utilities shall be as shown on the final plans, except that if variations in site conditions that might be detrimental are encountered, they shall be notified to the Planning Board and Department of Public Works to mutually agree on a revised plan.

Discussion of General Conditions:

With regard to General Condition #2, the word “promptly” was inserted in the phrase “they shall be notified to the Planning Board and Department of Public Works *promptly* to mutually agree on a revised plan.”

Also with regard to General Condition #2, Mr. Hanegan asked who decides on what is “detrimental.” Consensus identified the independent overseer as that person/party who would make that determination.

Mr. Cohen asked how the final location of the fire hydrant will be determined. Ms. Brown said it will come with the building permit. Ms. Perry said a hydrant is shown on the plan, on the easterly part of the T turnaround, and it appears to be correctly located at the end of the water line.

General discussion prior to final vote: Ms. Lloyd suggested conducting a non-binding straw poll “in case the potential vote is going against the applicant, so they have an opportunity to withdraw without prejudice.”

To provide the audience with some context, Ms. Mustapich asked what would happen next if the Board denied the application. Ms. Perry replied that the case would probably be appealed by the applicant within the 20 day window after the Town Clerk records the Board’s decision. Any interested party can appeal (in Superior or Land Court) Ms. Perry added that in most cases, if a Planning board isn’t happy with a subdivision layout, it tells the applicant what changes to make to gain approval.

Mr. Cohen asked Ms. Brown to describe what would happen to all the conditions and waivers just discussed if the case is overturned on appeal. Ms. Brown replied that “many of them might go away because they are discretionary. On appeal, everything changes.”

She added, “Just as a reminder, subdivision is a by-right animal. If I didn’t ask for any waivers, you’d have to approve this. The waivers are all ones you supported and most of them are ones the neighbors supported, as being more beneficial to the neighborhood and to the town. To turn around to say we’d take away the waivers would be detrimental to everybody.”

Ms. Lloyd commenced with the straw poll:

Ms. Hackman said, while it is a difficult decision, she is tempted to vote against the proposal because there is no guarantee that harm will not be inflicted on the abutters and neighbors. She added that she does not like that the T turnaround and is concerned that it sets a precedent. “It just feels like we’re squeezing developments into places that really can’t support them. Every development we see goes more and more down that road and I just want to put a stop to it. I do respect the landowner’s desire to develop the land but I don’t think it’s tenable in this situation, because of the stormwater and the awkward shape of the T turnaround.

“One thing I would say— apropos to [Ms. Perry’s] point that we can ask the applicant to make some changes: I would look a lot more favorably on this if we dropped the road down [shifting it east] another 10-20 feet, made the T turnaround a normal T turnaround so we don’t have a crazy lot outline and ambiguous ownership of land around the T turnaround. We’ve never done this before and it sets a precedent and I don’t want to see more developments like this in Bedford. I’m saying, ‘No’. I don’t want it.”

Ms. Mustapich said she appreciates the landowner’s desire to maximize his property. She does have reservations about stormwater. “I hope that [Ms. Brown’s] consultants are correct and their calculations are accurate and all the water stays on the property. But, I do think they are meeting the letter of sub-division. I am going to agree with [the proposal.]”

Mr. Cohen agreed with Ms. Mustapich, saying, “I think it’s a difficult parcel but I think they’ve done what they can to address concerns. This is something I would support.”

Mr. Hanegan offered his opinion, saying he appreciates the convergence and compromise that’s taken place between parties connected to this sub-division. However, he added, “For me, the drainage issue just isn’t solved. I’m not saying I would oppose all development because I do think some issues are fixable. But the way it is now, I’d have to say, ‘No.’”

This left it to Ms. Lloyd to break the tie. “I agree with everything [Ms. Hackman] says and yet, with great reluctance, I feel we don’t have the grounds to deny the proposal. I want to deny it but I don’t see the viable grounds to deny it. With deep reluctance, I would vote for it.”

MOTION: Ms. Mustapich moved to close the public hearing. Mr. Cohen seconded. The motion carried unanimously, 5-0-0.

WAIVERS:

MOTION: Ms. Mustapich made a motion to approve Section 3.3.1.3 Staking of centerline--waive. Ms. Hackman seconded. The motion passed unanimously, 5-0-0.

MOTION: Ms. Mustapich made a motion to approve Section 5.2.1.7 Curb radius – waive to allow 20 foot radius at exit from Alphonsa Lane turning west onto Hartwell Road. Mr. Cohen seconded. The motion passed unanimously, 5-0-0.

MOTION: Ms. Mustapich made a motion to approve Section 6.3.2.3 Catch Basins – waive to allow on one side only and at intervals approved by DPW staff. Mr. Cohen seconded. The motion passed unanimously, 5-0-0.

MOTION: Ms. Mustapich made a motion to approve Section 3.3.2.7 Stone Bounds – waive to allow installation as approved by DPW staff, to include any needed for reserve strip. Mr. Cohen seconded. The motion passed unanimously, 5-0-0.

MOTION: Ms. Mustapich made a motion to approve Section 5.2.2 Street Width – waive to allow 22 foot paved width. Mr. Cohen seconded. The motion passed unanimously, 5-0-0.

MOTION: Ms. Mustapich made a motion to approve Section 5.2.4.2 Dead End Ways – exercise Board’s discretion to allow tee turnaround. Mr. Cohen seconded. The motion passed on a 4-1-0 vote with Ms. Hackman dissenting.

MOTION: Ms. Mustapich made a motion to approve 6.4.1 Sidewalks - waive construction and accept easement for a potential future sidewalk. Mr. Cohen seconded. The motion passed on a 4-1-0 vote with Ms. Hackman dissenting.

MOTION: Ms. Mustapich made a motion to approve 6.6 Shade Trees – waive to extent necessary to allow planting of new trees and retention of existing trees (as presented, with revisions discussed– see condition). Mr. Cohen seconded. The motion passed unanimously, 5-0-0.

MOTION: Ms. Mustapich made a motion to approve Section 6.8 Street Lights – waive subject to provision of post lamps (see condition). Mr. Cohen seconded. The motion passes unanimously, 5-0-0.

MOTION: Ms. Mustapich made a motion to approve Section 5.2.1.3 Reserve strips - allow a reserve strip as being in the public interest (see condition). Mr. Cohen seconded. The motion passed unanimously, 5-0-0.

SPECIFIC CONDITIONS, CONDITIONS TO BE MET PRIOR TO PLAN ENDORSEMENT, GENERAL CONDITIONS, and PERFORMANCE GUARANTEE:

The Board reviewed substantive changes to the draft Certificate of Action as well as some detailed revisions to language, as documented above. The revisions to the draft can be summarized as affecting:

Specific conditions: #2 Reserve strip, #3 Street light/ post lights, #4 Street sign, #7 Grading and stormwater on house lots

Conditions prior to plan endorsement: #4 Easements

General conditions: #2 Notification of detrimental conditions

Additional conditions: Precise limit of tree cutting, and deletion of note; Hiring of independent professional to monitor construction in relation to stormwater.

MOTION: On a motion of Ms. Mustapich and a second by Mr. Cohen, the Board voted on June 23, 2015 by a vote of 3-2-0 to approve the subdivision plan with the conditions as documented. Sandra Hackman and Shawn Hanegan voted against.

Ms. Perry agreed to circulate the revised Certificate of Action (decision) to Board members for final review and editing prior to signing.

OLD BUSINESS: Zoning Reform Legislation. Discussion postponed.

STAFF REPORTS: Due to the lateness of the hour, Mr. Garber will send an informal update about upcoming regulatory cases via email.

However, he did give a brief and timely update on Lavender Lane’s finalization and performance guarantee.

“We received today two things: 1) An expedited an onsite inspection by Adrienne St. John with a cost breakdown, detailing the remaining items to be completed. 2) A copy of a letter tonight from Attorney Brown –not identifying specific date— but indicating the developer’s intention to complete the project.

“Ms. St. John is satisfied and confident that [the developer] is committed to completing 100% of the work, with the possible exception of as-built plans. Essentially it should be the first week in July—he needs to let the landscaper for the outlying parcel that’s building the pool get in there and then that impediment should be gone. He’s given verbal assurances that his crews are ready to go. He’s already done a little bit of work with granite curbing.”

Mr. Garber added that the guarantor of the project—First Commons Bank of Newton—has taken steps to encumber others of Mr. Ferrante’s loans so the Lavender Lane performance guarantee is “moving to be re-securitized and re-bonded. Everything is moving in a positive direction.”

Ms. Mustapich asked Ms. Brown to have the spelling of the street sign corrected before the Town “accepts it misspelled for life.” Ms. Brown said she would make a note of it.

Mr. Garber said Lavender Lane would be placed on a future agenda as an action item.

MINUTES: Postponed.

OTHER BUSINESS:

Recent Minutes

MOTION: Mr. Hanegan moved to formally commend Ms. Siebert for her assistance during the difficult time of Ms. Silvestrone’s absence for bereavement leave. Mr. Cohen seconded. The motion passed unanimously, 5-0-0.

Ms. Siebert left the meeting at this point.

Personnel Matter

Note: The following item was posted on the agenda as an executive session but after discussion, the Board determined that it did not meet the criteria. Therefore the open meeting session was continued.

The Board discussed options for coverage of the evening meetings now that the temporary funding of a minutes secretary has run out. The default is to return to coverage by the Admin Assistant (with compensatory time off), but other options to explore may be to create a separate permanent part-time position, either just for the Planning Board or in combination with other boards/ committees. Mr. Garber agreed to discuss the matter with personnel staff.

ADJOURNMENT

The Board voted to adjourn at 10:45 PM.

Planning Board Minutes –Continuation of 57/75 Hartwell Public Hearing
followed by General Session
June 23, 2015--FINAL

Respectfully submitted,
Kim Siebert, Acting Recording Secretary (with edits by Catherine Perry, Assistant Planner)

Approved as amended, July 14, 2015